

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

XIAOJIE SHUN a/k/a Lucy,  
and LIZHONG SHEN a/k/a Tony,

Defendant.

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**DECISION AND ORDER**  
16-CR-75-A

In an Indictment returned on June 28, 2016, defendants Xiaojie Shun and Lizhong Shen face one Count of conspiracy to defraud the United States in violation of 18 U.S.C. § 371, each face one distinct Count of tax perjury in violation of 26 U.S.C. § 7206(1), and defendant Shun faces a Count of tax obstruction in violation of 26 U.S.C. § 7212(a). The case was referred to Magistrate Judge Michael J. Roemer pursuant to 28 U.S.C. § 636(b)(1) for pretrial proceedings.

**I. Motions to Suppress Defendants' Statements.** On April 10, 2019, Magistrate Judge Roemer filed a Report and Recommendation (Dkt. No. 80) to recommend that motions of defendant Shun and defendant Shen to suppress statements (Dkt. Nos. 42, 44) be denied. Defendant Shun objected primarily on the grounds that she was in custody and had not been given *Miranda*<sup>1</sup> warnings before she made certain statements to law enforcement, and that her statements were not voluntary. Dkt. No. 84. Defendant Shen argued that statements he made to law

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<sup>1</sup> *Miranda* warnings are required to be given by law enforcement officers to ensure that persons subjected to custodial interrogation are aware of their Fifth Amendment rights against self-incrimination and to counsel. See *Miranda v. Arizona*, 384 U.S. 436, 487-79 (1966).

enforcement were not voluntary. Dkt. No. 86.

Pursuant to 28 U.S.C. §636(b)(1), the Court must make a *de novo* determination of the portions of a report and recommendation to which objections have been made. After reviewing the submissions of the parties, having heard oral argument, and upon *de novo* review, it is hereby

**ORDERED** that the motions of defendant Shun and defendant Shen to suppress statements (Dkt. Nos. 42, 44) are denied for the reasons stated in the Report and Recommendation. Dkt. No. 80.

**II. Defendant Shen's Motion to Dismiss.** On May 30, 2019, Magistrate Judge Roemer filed a Report and Recommendation (Dkt. No. 93) to recommend that defendant Shen's motion to dismiss the Indictment (Dkt. No. 79) be denied.

The Court has carefully reviewed the Report and Recommendation, the record in the case, and no objection having been filed, it is

**ORDERED**, pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Roemer's Report and Recommendation (Dkt. No. 93), defendant Shen's motion to dismiss the Indictment (Dkt. No. 79) is denied without prejudice to the defendant's right to seek to interpose at trial an affirmative defense of withdrawal from the conspiracy.

**III. Defendants' Motions for Bills of Particulars.** Magistrate Judge Roemer denied defendants' motions for Bills of Particulars (Dkt. Nos. 40, 42) by Order dated April 10, 2019. Dkt. No. 80, pp. 29-31. Defendant Shun and defendant Shen appealed the denial of their motions. Dkt. Nos. 84, 86. After due consideration of the

appeals and the Magistrate Judge's Order by the standard of review of clearly erroneous or contrary to law, 28 U.S.C. § 636(b)(1), the defendants' appeals are denied.

Further, defendants' supplemental requests (Dkt. Nos. 111, 112) that the Court require the United States to adopt a bill of particulars prepared by the defendants to moot the defendant's appeal of the Magistrate Judge's Order is denied.

**IV. Status Conference.** The parties shall be prepared to set a date for a change of plea or trial at the status conference that is scheduled for 9:00 a.m. on October 16, 2019.

**IT IS ALL SO ORDERED.**

*s/Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: September 13, 2019